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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
Philadelphia Electric Company )  
 )  
(Limerick Generating Station, )  
Units 1 and 2 )

Docket Nos. 50-352 OL  
50-353 OL

DOCKETED  
USNRC

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APPLICANT'S MOTION TO COMPEL ANSWERS TO ITS FIRST  
SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION  
OF DOCUMENTS TO CITY OF PHILADELPHIA AND LIMERICK  
ECOLOGY ACTION ON SEVERE ACCIDENT CONTENTIONS OR,  
ALTERNATIVELY, TO LIMIT THE PRESENTATION OF  
EVIDENCE IN CHIEF AND CROSS-EXAMINATION

Preliminary Statement

On April 9, 1984, Applicant served upon the City of Philadelphia ("City") and Limerick Ecology Action ("LEA") its first set of interrogatories and request for production of documents relating to the severe accident contentions. The City of Philadelphia's response was served on April 27, 1984 and received by Applicant's counsel on April 30, 1984. LEA's response was served April 30, 1984 and received May 1, 1984. Many of the answers provided, particularly by the City of Philadelphia, are either unresponsive or indeterminate, indicating that certain analyses have not yet been performed and may or may not be performed at some later date.

In view of the advanced stage of the proceeding, Applicant moves that the City and LEA be compelled to provide

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full and responsive answers or, alternatively, that they be barred from introducing the subject matter of the interrogatories and request for production of documents into evidence either by way of their cases in chief or cross-examination.<sup>1/</sup> Further, in view of the obvious time constraints, Applicant requests that the City and LEA be required to respond to this motion by filing an answer to be received in hand no later than May 11, 1984. For the reasons discussed more fully below, Applicant's motion to compel or to limit the evidence should be granted.

Argument

A number of the responses by the City and LEA indicate that information is not yet available or certain analyses have not yet been performed. It is unclear whether or when such information will become available or such analyses will be conducted. For example, the City's answer to Interrogatory 2 states that it "does not know at this time whether it will present testimony on the NEPA environmental impact issues related to a severe accident." In responding to Interrogatory 3, the City states that it will rely upon "any new evacuation study, any irrelevant [sic] material CRAC runs deems [sic] that may be done by the City or others

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<sup>1/</sup> As required, Applicant's counsel has attempted to resolve its differences informally with intervenors' counsel, but has been unsuccessful except as to Interrogatory 33 with the City and Interrogatories 4, 5, 6 and 12 with LEA.

and/or any other documents that are subsequently deemed relevant to the DES/FES and the requirements of NEPA." Similarly vague and unresponsive answers are made to Interrogatories 4, 5, 9, 10, 11, 12, 14, 15, 18, 20, 21, 22, 23, 28 and 30.<sup>2/</sup>

Likewise, LEA has answered Interrogatories 1 and 2 by stating that it "has no present intention to present an expert witness" or "to present a factual witness" on the subject matter of the interrogatories. Like the City, LEA has given other answers stating the possibility that it will rely upon other information or analyses not yet available, i.e., in its answers to Interrogatories 3, 7 and 23-33 (indicating no intention of presenting a direct case concerning these contentions "[a]t the present time"). Both the City and LEA should be compelled to answer these interrogatories completely, or be barred from presenting any evidence either by way of their cases in chief or cross-examination on the related subjects.

Additionally, other responses by the City and LEA are clearly inadequate. In answer to Interrogatory 6, the City claims that its discussions with its consultants are

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<sup>2/</sup> Under these circumstances, the obligation of the City and LEA to supplement its answers under 10 C.F.R. §2.740(e) will not provide Applicant with adequate protection because there is no guarantee that intervenors will promptly amend their answers to permit Applicant adequate case preparation.

privileged. Such a blanket claim of privilege may not be permitted because there has been no showing that such communications were "for the purpose of securing primarily either (i) an opinion of law or (ii) legal services or (iii) legal assistance in some legal proceeding."<sup>3/</sup> Under the circumstances, there has been no showing whatever that such communications were of a legal rather than factual nature so as to be wholly privileged.<sup>4/</sup>

In response to Interrogatory 13, the City states that it has no "direct knowledge" of matters beyond its boundaries. It should be required to divulge information from whatever source if it is responsive to the interrogatories. Further, the City refers to completed evacuation plans "in place in Philadelphia" which it has not provided in response to Applicant's request for documents. These should be furnished.

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<sup>3/</sup> Consumers Power Company (Midland Plant, Units 1 and 2), LBP-83-70, 18 NRC 1094, 1098 (1983).

<sup>4/</sup> A party objecting to the production of documents or discovery of information on the grounds of attorney/client privilege must make the same showing needed for a protective order. In particular, a party claiming privilege has the burden of demonstrating that it has specifically described the information or documents sought to be withheld and the precise reason why the privilege exists. The City's blanket assertion of privilege is therefore invalid. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1153 (1982).

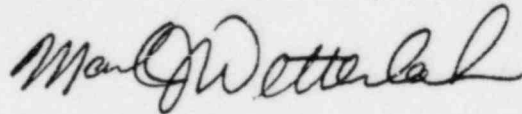
Finally, in response to Interrogatory 30, the City states that it has not provided information because the computer runs it performed "will not be the subject of testimony, if any, that the City may file." This is not a proper objection, inasmuch as Applicant is entitled to relevant information whether or not the City chooses to offer it in evidence.

Conclusion

Given Applicant's need to prepare its case based upon an understanding of what allegations it must meet, the Board should compel the City of Philadelphia and LEA to provide the requested information and documents as soon as possible. The Board should further order that neither the City nor LEA may present evidence in its case in chief nor cross-examine as to any information or document not previously furnished to Applicant by one week prior to the commencement of the hearing (i.e., May 15, 1984).

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn", written in a cursive style.

Mark J. Wetterhahn  
Counsel for the Applicant

May 8, 1984



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion to Compel Answers to its First Set of Interrogatories and Request for Production of Documents to City of Philadelphia and Limerick Ecology Action on Severe Accident Contentions or, Alternatively, to Limit the Presentation of Evidence in Chief and Cross-Examination" dated May 8, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 8th day of May, 1984:

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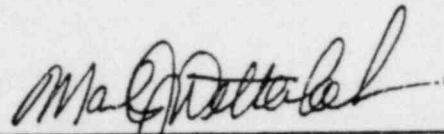
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